

April 9, 2010

Mr. Dave Mehl
Energy Section Manager
California Air Resources Board
1001 I Street
Sacramento, CA 94814



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General Manager
Terry Erlewine

Re: California Air Resources Board's "Preliminary Draft Regulations for the California Renewable Electricity Standard"

Dear Mr. Mehl:

The State Water Contractors (SWC) submit the attached comments on the California Air Resources Board's (ARB) "Preliminary Draft Regulations for the California Renewable Electricity Standard" that were issued March 11, 2010. In the accompanying Question and Answer Document issued simultaneously with the Draft Regulations, the ARB staff stated their openness to considering comments on any provisions.

The SWC¹ is a non-profit, mutual benefit corporation organized under the laws of the State of California. The SWC is comprised of 27 public agencies holding contracts to purchase water delivered by the State Water Resources Development System, otherwise known as the State Water Project (SWP), which is owned and operated by the California Department of Water Resources (DWR). SWC's public agency members are the beneficial users of the SWP, which provides water for drinking, commercial, industrial, and agricultural purposes to a population of more than 20 million people and to over 750,000 acres of farmland throughout the San Francisco Bay-Area, the Central Valley of California, and Southern California. The primary purpose of the SWP is to store and deliver water to the SWP contractors, who pay all of the costs incurred by the SWP.

The SWC has a vested interest in the ongoing development of regulations for implementing AB 32 since the final regulations will affect the operation of California's electrical system. The SWP's ability to deliver water throughout the state is critically dependent on a reliable, efficient power system. Delivery of this water is vital to the health, welfare and productivity of the SWP contractors' service areas.

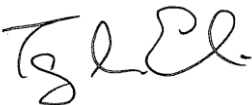
¹The SWC members are: Alameda County Flood Control & Water Conservation District, Zone 7; Alameda County Water District; Antelope Valley-East Kern Water Agency; Casitas Municipal Water District on behalf of the Ventura County Flood Control District; Castaic Lake Water Agency; Central Coast Water Authority on behalf of the Santa Barbara County Flood Control & Water Conservation District; City of Yuba City; Coachella Valley Water District; County of Kings; Crestline-Lake Arrowhead Water Agency; Desert Water Agency; Dudley Ridge Water District; Empire-West Side Irrigation District; Kern County Water Agency; Littlerock Creek Irrigation District; The Metropolitan Water District of Southern California; Mojave Water Agency; Napa County Flood Control & Water Conservation District; Oak Flat Water District; Palmdale Water District; San Bernardino Valley Municipal Water District; San Gabriel Valley Municipal Water District; San Geronimo Pass Water Agency; San Luis Obispo Co. Flood Control & Water Conservation District; Santa Clara Valley Water District; Solano County Water Agency; and Tulare Lake Basin Water Storage District.

In November 2009, the SWC commented on the ARB's "Proposed Concept Outline for the California Renewable Electricity Standard." In those comments, the SWC provided justification why DWR should not be included as a regulated Party under the Renewable Electricity Standard (RES). This submittal provides additional background information supporting ARB excluding DWR as a regulated party under the RES.

The SWC is not arguing that DWR should be exempt from any requirement to reduce GHG emissions in accordance with the applicable portions of AB 32. Rather, the SWC believes that DWR is both required and authorized to develop and implement GHG emissions reduction policies specific to its operations. These policies must be developed in coordination with DWR's policies for achieving its core water management mission and for implementing climate change adaptation strategies. DWR has taken the initial steps in this process by developing the *California Water Plan Update 2009*, a *Sustainability Policy* and contributing to the California Natural Resource Agency's *2009 California Climate Adaptation Strategy*. The proposed structure and metric of the RES, however, are inconsistent with DWR's mission and mitigation/adaptation obligations. The RES, as ordered by Executive Orders S-14-08 and S-21-09, is directed specifically at retail electricity providers. Accordingly, ARB should remove DWR from the list of Regulated Parties in the RES regulations.

The SWC appreciates this opportunity to comment on the Preliminary Draft Regulation for the California Renewable Electricity Standard and respectfully requests that ARB not include DWR as a regulated party under RES. We would welcome the opportunity to meet with ARB staff to discuss our comments further.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Erlewine', with a stylized flourish at the end.

Terry L. Erlewine
General Manager

Attachment

COMMENTS OF THE STATE WATER CONTRACTORS

PRELIMINARY DRAFT REGULATIONS FOR THE CALIFORNIA RENEWABLE ELECTRICITY STANDARD

April 9, 2010

1. Introduction

These comments are submitted by the State Water Contractors (SWC) in response to the Preliminary Draft Regulation (PDR) for the California Renewable Electricity Standard (RES) that was issued on March 11, 2010. In the accompanying Question & Answers (Q&A) document issued simultaneously, the Air Resources Board (ARB) staff stated their openness to considering comments on any provision.¹

2. Statement of the SWC's Position

- The Department of Water Resources (DWR) should not be subject to the RES. The PDR lists DWR as a Regulated Party² but does not include any regulatory language or metric that could reasonably be applied to DWR's electricity operations for the State Water Project (SWP). The SWP generates electricity, uses electricity, and participates in energy markets only to the extent necessary to fulfill its water related responsibilities, and the SWP serves no end-use (retail) customers.
- DWR, as a state agency, has an independent duty to consider and implement strategies to reduce its GHG emissions for the purpose of mitigating climate change. AB 32 expressly states that "nothing in [it] shall limit the existing authority of [DWR] to adopt and implement GHG emissions reduction measures." DWR is currently pursuing this mandate through the implementation of its Sustainability Policy that is the most cost-effective, technologically feasible means for DWR to achieve the emission reduction and policy goals of AB 32.
- DWR is responsible for simultaneously implementing complementary policies designed to: (1) *adapt* California to the impacts of climate change; and (2) *mitigate* future climate change. The *2009 California Climate Adaptation Strategy* and the *California Water Plan Update 2009* present a comprehensive and diverse set of resource management strategies designed to meet these responsibilities.
- DWR has an "imperative" for implementing adaptation strategies that respond to the anticipated changes in California's environment, public health, and economy as a result of water-related issues. There are few, if any, other entities or agencies that have a more direct role in actually preparing California to adapt to a changing climate. DWR must develop and implement these adaptation strategies in a comprehensive and coordinated way with other state agencies that are also responsible for executing adaptation strategies. The RES, as proposed by Executive Orders S-14-08 and S-21-09, is directed at retail electric utilities that do not have similar requirements for implementing adaptive strategies.
- DWR has incorporated significant mitigation strategies into its Sustainability Plan for achieving the AB 32 goals and policies applicable to DWR. These include pursuing efficiency in water and

¹ PDR Q&A, at 2.

² PDR § 97002(a)(12)(F).

energy use at every opportunity while also reducing GHG emissions by procuring additional clean energy resources for operating the SWP.

3. Overview of DWR and the California Water Plan 2009

DWR is a state-level water agency. DWR is neither a private entity, a local government agency, nor an electric utility under California law. DWR's primary mission is monitoring, conserving, and developing California's water resources, providing for the public safety, and preventing property damage due to floods. DWR operates the SWP for the main purpose of storing water and distributing it to 29 urban and agricultural water suppliers located throughout California. The SWP generates electricity, uses electricity, and participates in energy markets only to the extent necessary to fulfill its water-related responsibilities. The SWP does not directly serve any retail electricity customers.

On March 30, 2010, DWR published the *California Water Plan Update 2009* (Water Plan). A key objective of the Water Plan is to present a comprehensive and diverse set of resource management strategies that can help meet the water-related resource management needs of California.³ The Water Plan lays out objectives and actions that will help California adapt to the many water supply and demand changes that will result from climate change effects. That Water Plan is incorporated by reference in these comments.

California's reservoirs, water delivery systems, and operating rules were developed using historical hydrology, but, DWR's new Water Plan recognizes that these assumptions may no longer be valid due to climate change.⁴ The future hydrology of California is not like the past. Without DWR's active management, California would face an uncertain future as climate change reduces California's snowpack storage, increases the frequency and intensity of floods, adversely impacts ecosystems and watershed health, and impairs groundwater and surface water quality.⁵ At the same time, California's water system has an aging infrastructure in need of improvement but the State is undergoing a financial crisis amidst a world-wide recession.⁶ Immediate actions must be taken and DWR must choose the most cost-effective actions to achieve the greatest benefit to California. DWR recognizes that it must take action now to provide integrated, reliable, sustainable, and secure water resources and management systems to protect California's health, economy, and ecosystems.⁷

a. DWR will serve the dual roles of mitigating and adapting to climate change

California's water resources are stressed in the current day, but this will intensify under the affects of climate change. DWR must act in the short-term to *adapt* to the affects of climate change while also implementing longer term solutions to *mitigate* future changes. The more critical of these two tasks is DWR's "imperative" for implementing adaptation strategies that respond to the anticipated changes in California's environment, public health, and economy as a result of water-related issues.⁸ Several of the

³ Water Plan, at 1-5.

⁴ Water Plan, at 8, 2-5; "Traditional approaches for predicting the future have been based on projecting past trends into the future. Today, there is better understanding that strategies for future water management must be dynamic, adaptive, and durable. In addition, the strategies must be comprehensive and integrate physical, biological, and social sciences and economics." Water Plan, at 2-22.

⁵ Water Plan, at 2-5, 2-9, 2-30.

⁶ Water Plan, at 9, 2-6.

⁷ Water Plan, at 1, 2-9, 2-11..

⁸ Water Plan, at 2-21, 5-6.

Water Plan objectives and actions will help California adapt to climate change and are ready for immediate adoption.⁹

Simultaneously, DWR is implementing mitigation strategies to reduce GHG emissions from water-related energy use. As described further below, DWR is pursuing increased water and energy efficiency throughout its operations and also reducing GHG emissions by procuring additional renewable energy resources for operating the SWP. Even so, the existing SWP hydroelectricity system provides substantial benefits to California's electricity grid and climate change mitigation efforts by generating California's largest source of GHG emissions-free energy.

b. The key themes of the Water Plan are integrated water management and sustainability

The Water Plan strategies must be well-coordinated at the state, regional, and local levels to maximize their affect and not be driven solely by a single policy objective directed at the electric utility sector like the RES.¹⁰ The new Water Plan is a California-wide plan developed by an interagency steering committee representing 21 state government agencies, California Native American Tribes, and in coordination with federal agencies.¹¹

DWR's methods for implementing adaptation and mitigation strategies must conform to all of California's goals, while also achieving its core mission. The Water Plan recognizes that water is a vital natural resource for all Californians and the environment. It states that water management activities must occur in the context of sustainable resource management and environmental protection and stewardship.¹² The Water Plan acknowledges that water resources are finite and that more sustainable management practices are required than were practiced in the past. The Water Plan states that:

“Given the uncertainties and risks in the water system, some management strategies may provide for a more sustainable water supply, flood management, and ecosystems than another set of management strategies. Recognizing that change will continue to occur and that additional uncertainties and risks are likely to surface in the future, water management actions must be dynamic, adaptive, and durable.”¹³

As a consequence, DWR must apply its specialized expertise to achieve its core mission related to the changing requirements of California's water resources. These critical decisions should not be guided or limited by standards developed for electric utilities.

4. The Water Plan and DWR's Sustainability Policy present the most cost-effective, technologically feasible means for DWR to achieve GHG emissions reductions

DWR's Sustainability Policy and Water Plan proposals comprise the most cost-effective, coordinated, comprehensive, and technologically feasible means for DWR to achieve the objectives and policies of AB 32. As shown below, the Sustainability Policy meets the requirement for state agencies to implement

⁹ Water Plan, at 2-21.

¹⁰ Water Plan, at 2-13, 2-16.

¹¹ Water Plan, at 12, 2-17. These agencies include the ARB, California Energy Commission, California Public Utilities Commission, and the California Environmental Protection Agency.

¹² Water Plan, at 2-8, 2-22, 2-29, 7-21.

¹³ Water Plan, at 2-23, 5-16, 5-17.

GHG emission reduction strategies. Moreover, the Sustainability Policy was crafted in harmony with a multitude of policy goals that are applicable to ARB's regulations.

In accordance with Health & Safety Code § 38592(a), all state agencies shall consider and implement strategies to reduce their GHG emissions. Also, pursuant to Health & Safety Code § 38598(a), nothing in AB 32 shall limit the existing authority of a state entity to adopt and implement GHG emissions reduction measures.

DWR is already making efforts towards meeting GHG emission reduction goals. In April 2009, DWR management approved a Sustainability Policy that includes a number of steps to reduce its GHG emissions. Specifically, the energy-related components of the Policy state that DWR will:

- Incorporate energy efficiency and water efficiency and conservation in all capital and renovation projects, as well as operations and maintenance activities, within budgetary constraints;¹⁴
- Model state-of-the-art water efficiency practices within State Government, with a goal of reducing its per capita water consumption by at least 20% by 2020;¹⁵
- Maximize the use of technically feasible and cost-effective clean and renewable energy sources for the State Water Project and DWR's business operations;
- Track and report its GHG emissions to ARB and The Climate Registry;
- Reduce its GHG emissions to at least 1990 levels by 2020, consistent with the ARB Scoping Plan goal for State government in the AB 32 Scoping Plan; and
- Utilize its purchasing power to meet its sustainability objectives.

In accordance with Health & Safety Code §§ 38561 and 38501(f), ARB should coordinate with other state agencies to implement AB 32 and should consult with state agencies with jurisdiction over sources of GHGs to ensure that the reduction activities are complementary, non-duplicative, and implemented cost-effectively.

- DWR's Mission is water management and delivery: DWR's primary mission is monitoring, conserving, and developing California's water resources, providing public safety, and preventing property damage related to floods. DWR has the special expertise to achieve these goals in the most cost-effective and technologically feasible manner.
- DWR's mission is threatened by climate change. This poses monumental risks to DWR's mission through reduced Sierra snowpack, decreased water storage and delivery, and increased risks to Delta levees. DWR is best situated to develop adaptation and mitigation strategies that are complementary, non-duplicative, and may be implemented cost-effectively.
- DWR will implement plans to reduce the energy consumption of water and wastewater management systems by implementing the water-related strategies in the AB 32 Scoping Plan to mitigate GHG emissions.¹⁶ Water-use efficiency will reduce energy demand because significant amounts of energy are used in water conveyance, distribution, and use.
- DWR worked on the Water Plan collaboratively with 21 state government agencies with jurisdictions over different aspects of water resources, California Native American Tribes, and federal agencies.

¹⁴ Water Plan, at 7-13.

¹⁵ Water Plan, at 7-11 to 7-14.

¹⁶ Water Plan, at 7-33 to 7-35.

In accordance with Health & Safety Code §§ 38501(h), 38560, 38560.5(b), and 38562(a)-(b), AB 32 promotes emission reduction measures that also achieve certain policy goals. As shown below, the current DWR Water Plan and Sustainability Policy is in full conformance with these AB 32 measures and goals.

- **The Policy minimizes costs and maximizes benefits to California's economy; and complements the state's efforts to improve air quality.**
 - DWR operates the SWP in the most cost-effective manner based on varied regulatory requirements, environmental limitations (ESA, salinity control, etc.), agriculture, flood protection, urban water demand, and agricultural needs.
 - The SWP participates in California's Demand Response Program. This reduces the need for the least efficient on-peak thermal generation and, subsequently, improves air quality.
- **The Policy improves and modernizes California's energy infrastructure and maintains system reliability.**
 - DWR has implemented an energy efficiency program that entails refurbishment or replacement of hydroelectric units at SWP facilities, and which increases the efficiency of these units from an average of approximately 89.5% to as high as 93.3%.
 - DWR's role in grid stability assists GHG emission reductions: In addition to the vital role of the SWP as California's water delivery system and the functions it performs in managing floods, the SWP makes a critical contribution to the reliability and stability of the California Independent System Operator's wholesale power grid operations.
 - The SWP attempts to pump primarily during off-peak hours and generate during peak periods. As a result, clean hydropower provides tremendous operational flexibility to the grid and replaces "dirty" power sources during peak demand periods.
- **The Water Plan and Policy are equitable and doesn't disproportionately impact low-income communities.**
 - The SWP provides water to 2/3 of the state's population located in southern California that includes many low-income communities. The SWP also provides water to support agriculture in the central valley, which employs many low-income persons.
 - The Water Plan is designed to improve Tribal water and natural resources.¹⁷
 - The Water Plan is designed to increase the participation of small and disadvantaged communities in State processes and programs to achieve fair and equitable distribution of benefits.¹⁸
- **The Policy encourages early action.**
 - DWR will meet the first AB 32 goal 12 years early. GHG emission levels from SWP operations will meet the AB 32 goal of reducing emissions to 1990 levels well in advance of the 2020 deadline.
 - DWR is phasing out the Reid Gardner coal plant and acquiring less carbon-intensive energy. Subsequent to the passage of AB 32, DWR formally notified the plant's owner that DWR will not renew this agreement, which expires in 2013.

¹⁷ Water Plan, at 7-39 to 7-41.

¹⁸ Water Plan, at 7-41 to 7-43.

- **The Water Plan and Policy promote the diversification of energy sources.**
 - DWR is replacing its coal-based energy with a combination of cleaner, more efficient resources, improvements to the SWP system, and renewable energy resources, significantly reducing the SWP's emissions.
 - The production from the SWP's existing hydroelectric facilities is sufficient to meet 40 to 60 percent of SWP's annual pumping energy needs. The hydroelectric generation produces no GHG emissions.
 - DWR will implement a progressively increasing procurement of renewable resources to achieve the state's GHG targets of 1990 levels by 2020 and 80% below 1990 levels by 2050 (as described in Executive Order S-3-05).
- **The Policy promotes overall societal benefits and other benefits to the economy, environment, and public health.**
 - The proper operation of the SWP is essential to California's water and flood management. The SWP provides the foundation for the state's economic vitality, providing water supply, sanitation, clean electricity, recreation, agriculture, and flood protection (2009 California Climate Adaptation Strategy).
 - The Water Plan is designed to protect and restore water and groundwater quality to safeguard public and environmental health and secure California's water supplies for beneficial uses.¹⁹
 - The Water Plan will promote, improve, and expand environmental stewardship to protect and enhance the environment by improving watershed, floodplain, and in-stream functions and to sustain water and flood management systems.²⁰
 - The Water Plan sets as co-equal goals a healthy Delta ecosystem and a reliable water supply for California.²¹
- **The Policy minimizes the administrative burden to ARB.**
 - Regulation of DWR by ARB is not mandated by Executive Orders S-14-08 and S-21-09 since DWR is not a retail provider. Establishing special regulations for DWR will require an extra burden for ARB. DWR, as a sister state agency, has sufficient authority and specialized expertise to develop and implement its own emission reduction measures as directed by Executive Order S-13-08 and S-3-05.
 - Oversight and enforcement is possible since DWR is making open and transparent emissions reports to ARB through the AB 32 mandatory reporting process. DWR also describes its energy use, purchasing activities, efforts to reduce its emissions, and use of renewable energy in three reports to the Governor and Legislature each year.

In accordance with Health & Safety Code § 38562(e), AB 32 requires that ARB rely upon the best available economic and scientific information and the assessment of existing and projected technological capabilities when adopting regulations.

- The Policy is integrated with the 2009 California Climate Adaptation Strategy and both are based on the best available economic and scientific information and DWR's assessment of the technological capabilities of California's infrastructure.

¹⁹ Water Plan, at 7-18 to 7-21.

²⁰ Water Plan, at 7-21 to 7-23.

²¹ Water Plan, at 7-26 to 7-31.

- Executive Order S-13-08 directed California and DWR to begin a consistent statewide, thoughtful, sensible, science-based approach to climate change adaptation. DWR worked with other state agencies to develop the 2009 California Climate Adaptation Strategy document that included 10 specific Water Management Adaptation Strategies. These included actions to achieve aggressive water use efficiencies and several strategies aimed to sustain, protect, and improve California's ecosystems in the face of climate change.²²

5. Recommendation to ARB

The SWC is not arguing that DWR should be exempt from any requirement to reduce GHG emissions in accordance with the applicable portions of AB 32. Rather, the SWC believes that DWR is both required and authorized to develop and implement GHG emissions reduction policies specific to its operations. These policies must be developed in coordination with DWR's policies for achieving its core water management mission and implementing climate change adaptation strategies. DWR has initiated these steps by developing the Water Plan and Sustainability Policy. The proposed structure and metric of the RES, however, are inconsistent with DWR's mission and mitigation/adaptation obligations. The RES, as ordered by Executive Orders S-14-08 and S-21-09, is directed specifically at retail electricity providers. Accordingly, ARB should remove DWR from the list of Regulated Parties in the RES regulations.

²² 2009 California Climate Adaptation Strategy, at 79-91.